

1                   BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
2                   STATE OF WASHINGTON

3           SQUAXIN ISLAND TRIBE,

4                   Appellant,

5                   v.

6           STATE OF WASHINGTON,  
7           DEPARTMENT OF ECOLOGY; and  
8           MILLER LAND and TIMBER LLC,

                  Respondents.

PCHB NO. 05-137

ORDER ON MOTIONS

9           The Squaxin Island Tribe (Squaxin Tribe) filed an appeal with the Pollution Control  
10          Hearings Board (Board) on October 12, 2005, challenging the Department of Ecology's  
11          (Ecology) issuance of two groundwater permits to Miller Land and Timber LLC (Miller) for the  
12          purpose of domestic supply and stream augmentation. The wells will be located near Woodland  
13          Creek, which has been closed to further surface water appropriation under WAC 173-513-040.  
14          The groundwater is in hydraulic continuity with the surface water.

15          The Squaxin Tribe filed a Motion for Summary Judgment on Issue No. 8 in this appeal.  
16          Issue No. 8, as stated in the December 1, 2005, Pre-Hearing Order, is as follows:

17                 Whether Ecology has the authority under chapter 90.03 RCW or chapter 90.44 RCW to  
18                 grant a permit for ground water consumption based on a mitigation proposal where it  
19                 would otherwise be denied because of its adverse impact on surface water?

20          The Squaxin Tribe also seeks a ruling from the Board with regard to the standard that is  
21          referenced in Issue No. 1. This Issue states:

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1 Whether Ecology's Reports of Examination Nos. G2-29951 and G2-30137 are in  
2 compliance with the standard in WAC 173-513-050?

3 The Tribe asks the Board to clarify whether the "standard in WAC 173-513-050" means  
4 that "a proposed withdrawal of ground water from a closed stream or lake in hydraulic continuity  
5 must be denied if it is established factually that the withdrawal will have *any effect* on the flow or  
6 level of the surface water." *Citing Postema v. Pollution Control Hearings Board*, 142 Wn.2d 68,  
7 94, 11 P.3d 726 (2000) (emphasis added).

8 In addition, the Squaxin Tribe asks the Board to assign the burden of proof to Ecology to  
9 demonstrate that the permits at issue comply with the provisions of the Water Code and WAC  
10 chapter 173-513.  
11

12 Miller filed a Motion for Partial Summary Judgment on Issues No. 2, 3, and 5.<sup>1</sup> Ecology  
13 filed a response in support of Miller's request for partial summary judgment of these three issues.  
14 The Squaxin Tribe filed a letter in response to this motion concurring in the dismissal of these  
15 three issues from the case. The Board, therefore, considers Issues 2, 3, and 5 as withdrawn.  
16 Legal issues 2, 3, and 5 in this appeal, as stated in the December 1, 2005, Pre-Hearing Order, are  
17 as follows:

18 2. Whether the appropriation authorized by Ecology in Report of  
19 Examination No. G2-29951 will impair existing rights.

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20 <sup>1</sup> Miller also requested summary judgment in its favor on Legal Issues 1, 4, 9, and 10 in its response to the Squaxin  
21 Tribe's Motion for Summary Judgment. The Squaxin Tribe did not specifically identify which issues they sought to  
dispose of through summary judgment until they filed their reply. Miller, in attempting to clarify the Squaxin  
Tribe's motion, suggested that the Tribe was also seeking summary judgment on issues 1, 4, 9, and 10. Miller then  
requested the Board grant summary judgment in its favor on those four additional issues. The Board believes these  
four issues raise material facts in dispute and are not appropriate for summary judgment.

3. Whether the appropriation authorized by Ecology in Report of Examination No. G2-30137 will impair existing rights.
5. Whether Ecology properly evaluated and determined whether the permits would have no clear adverse impacts on surface water and senior water rights.

John B. Arum and Kevin R. Lyon represent Appellant Squaxin Tribe. Sarah E. Mack, James A. Tupper, and Timothy L. McMahan represent Miller. Barbara A. Markham and Stephen H. North represent Ecology.

The Pollution Control Hearings Board (Board) comprised of William H. Lynch, presiding, Kathleen D. Mix, and Andrea McNamara Doyle, reviewed the pleadings and record pertinent to the motions in this case. The parties presented oral argument to the Board on April 7, 2006.

In rendering its decision, the Board considered the following submittals:

1. Squaxin Tribe's Motion for Summary Judgment.
2. Declaration of John B. Arum with attached exhibits.
3. Ecology's Response to Squaxin Tribe's Motion for Summary Judgment.
4. Miller's Response in Opposition to Tribe's Summary Judgment Motion.
5. Declaration of Eric F. Weber and attached exhibits.
6. Squaxin Tribe's Reply in Support of Motion for Summary Judgment.
7. Second Declaration of John B. Arum with attached exhibits.

Having fully considered the record in this case and being fully advised, the Board enters the following ruling:

#### FACTUAL BACKGROUND

[1]

Miller sought water rights to serve two proposed residential housing developments located north of Lacey, Washington: Pleasant Glade and Carpenter Ridge. The proposed

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1 developments are located near Woodland Creek in the Deschutes River Watershed in Water  
2 Resources Inventory Area (WRIA) 13. *Declaration of John Arum, Exs. 3 and 4.* Woodland  
3 Creek and its tributaries were closed to further consumptive withdrawals in 1980 when Ecology  
4 adopted WAC 173-513-040(1). WAC Chapter 173-513 applies to waters within the Deschutes  
5 River basin.

6 [2]

7 WAC Chapter 173-513 does not prohibit all groundwater withdrawals. WAC 173-513-  
8 050 states:

9 Future ground water withdrawal proposals will not be affected by this chapter  
10 unless it is verified that such withdrawal would clearly have an adverse impact upon the  
surface water system contrary to the intent and objectives of this chapter.

11 [3]

12 Ecology denied both of Miller's water right applications on August 10, 2004. The reason  
13 listed as the basis for the denials was that pumping water from the wells would capture water that  
14 would otherwise contribute to the flows in Woodland Creek and its associated wetlands.  
15 Ecology noted that maintaining flows in Woodland Creek is "necessary to provide protection for  
16 wildlife, fish, water quality, and aesthetic values." *Declaration of John Arum, Exs. 5 and 6.*

17 [4]

18 Miller appealed the denials contained in these Reports of Examination to the Pollution  
19 Control Hearings Board on September 9, 2004. Ecology and Miller reached a settlement  
20 agreement and the Board dismissed the appeal on September 6, 2005. *Declaration of John*  
21 *Arum, Ex. 11.*

1 [5]

2 Miller had previously hired a licensed hydrogeologist to prepare a hydrogeologic  
3 assessment of the proposed Pleasant Glade project. The assessment was prepared based upon the  
4 original 101 residential units planned for this project. The hydrogeologic assessment of the  
5 original Pleasant Glade project concluded that the development would not have a significant  
6 impact on existing groundwater uses and only a minor impact upon surface water flows in  
7 Woodland Creek. The assessment concluded that the potential impacts from the development  
8 are likely to be negligible and can be offset by mitigation. *Declaration of Eric F. Weber, Ex. A.*  
9 Thurston County land use regulations subsequently reduced the size of the Pleasant Glade  
10 project to 37 residential units. The nearby Carpenter Ridge preliminary plat contains 27  
11 residential units. Miller contends the impact of the two proposed projects combined (64 units) is  
12 even less than what was projected under the originally proposed Pleasant Glade project (101  
13 units).

14 [6]

15 After the denial of the initial applications, Ecology conducted a field investigation with  
16 various representatives. Miller included a stream augmentation plan and other conservation  
17 measures as part of its modified proposal to Ecology. Ecology issued amended Reports of  
18 Examination G2-29951<sup>2</sup> and G2-3017<sup>3</sup> approving Miller's modified proposal on September 15,  
19 2005. Ecology recognized that the number of residential units for the Pleasant Glade  
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21 <sup>2</sup> Pleasant Glade

<sup>3</sup> Carpenter Ridge

1 development was reduced from 101 equivalent residential units to 37 equivalent residential units.

2 *Declaration of John Arum, Exs. 3 and 4.*

3 [7]

4 The stream augmentation plan proposed by Miller utilizes a single well to provide the  
5 mitigation for both the Pleasant Glade development and the Carpenter Ridge development.

6 Groundwater will be pumped by the well and discharged into a pond. The water will then be  
7 directed over rocks for the purpose of oxygenation prior to being introduced into the stream.

8 Augmentation will occur during the low flow period of June 1 to November 30. The Reports of  
9 Examination indicate that a mitigation ratio of 10 to 1 will be utilized (10 gallons per minute of  
10 augmentation will be provided for every gallon of estimated baseflow impact). *Declaration of*

11 *John Arum, Exs. 3 and 4.*

12 [8]

13 Both Reports of Examination conclude that the groundwater withdrawals are not  
14 expected to have a clear adverse impact on surface water. They also state that “[a]lthough  
15 affects will be year-round, during non-mitigated months pumping will not have a clear adverse  
16 impact since non-mitigated months correspond to peak flows.” *Declaration of John Arum, Exs.*

17 *3 and 4*

18 [9]

19 The Squaxin Tribe filed its appeal challenging Ecology’s issuance of these two  
20 groundwater permits to Miller with the Board on October 12, 2005

1 ANALYSIS

2 [10]

3 Summary judgment is a procedure available to avoid unnecessary trials where formal  
4 issues cannot be factually supported and cannot lead to, or result in, a favorable outcome to the  
5 opposing party. *Jacobsen v. State*, 89 Wn. 2d 104, 108, 569 P.2d 1152 (1977). The summary  
6 judgment procedure is designed to eliminate trial if only questions of law remain for resolution.

7 The party moving for summary judgment must show there are no genuine issues of  
8 material fact and the moving party is entitled to judgment as a matter of law. *Magula v. Benton*  
9 *Franklin Title Co., Inc.*, 131 Wn. 2d 171, 182, 930 P. 2d 307 (1997). A material fact in a  
10 summary judgment proceeding is one affecting the outcome under the governing law. *Eriks v.*  
11 *Denver*, 118 Wn. 2d 451, 456, 824 P. 2d 1207 (1992). If the moving party satisfies its burden,  
12 then the non-moving party must present evidence demonstrating material facts are in dispute.  
13 *Atherton Condo Ass'n v. Blume Dev. Co.* 115 Wn. 2d 506, 516, 799 P.2d 250 (1990),  
14 *reconsideration denied* (1991). Summary judgment may also be granted to the non-moving  
15 party when the facts are not in dispute. *Impecoven v. Department of Revenue*, 120 Wn.2d 357,  
16 365, 842 P.2d 470 (1992).

17 There are no material facts in dispute, which are necessary to resolve Issue No. 8 in this  
18 matter. Therefore summary judgment is appropriate.

19 [11]

20 The Board first addresses the Squaxin Tribe's assertion that Ecology lacks the authority  
21 to approve a mitigation plan because it doesn't have uniform standards to evaluate the adequacy

1 of a mitigation plan. The Tribe contends that adequate safeguards do not exist to control  
2 arbitrary administrative action and the abuse of discretion, which were the type of actions  
3 prohibited by the Supreme Court in *Barry and Barry, Inc. v. Department of Motor Vehicles*, 81  
4 Wn.2d 155, 164 500 P.2d 540 (1972).

5 [12]

6 RCW 90.03.255 and RCW 909.44.055 direct Ecology to take into consideration the  
7 benefits and costs, including environmental effects, of any “resource management technique”  
8 included as part of a water right application. In *Ecology v. Theodoratus*, 135 Wn.2d 582, 597,  
9 957 P.2d 1241 (1998), the Washington Supreme Court expressly upheld Ecology’s authority to  
10 condition a water right permit.

11 [13]

12 The Squaxin Tribe acknowledges that RCW 90.03.255 and RCW 90.44.055 delegates to  
13 Ecology the authority to evaluate certain types of mitigation measures associated with the  
14 issuance of new water rights. Ecology has not, however, adopted any rules or informal policies  
15 to evaluate the adequacy of water rights mitigation plan. The Tribe refers to an April 2003 report  
16 prepared by Ecology to demonstrate an inconsistent application of mitigation requirements for  
17 various projects. *Declaration of John Arum, Ex. 10, “Mitigation Measures Used in Water Right*  
18 *Permitting, Prepared by Washington State Department of Ecology Water Resources Program,*  
19 *April 2003.”* The Squaxin Tribe also attempts to show the need for rules by pointing out in its  
20 reply brief that Ecology was at one time considering adopting rules regarding water mitigation  
21 plans. *Second Declaration of John B. Arum, Exs. 12 and 13.*



1 [14]

2 Ecology asserts the Board has no jurisdiction to address this issue raised by the Appellant  
3 because it amounts to a facial challenge of the regulation. In a recent Board decision pertaining  
4 to whether sufficient standards existed for Ecology to exercise authority over wetlands, the  
5 Board stated that it “does not have jurisdiction to consider a facial challenge to a rule adopted by  
6 Ecology, *Seattle v. Department of Ecology*, 37 Wn. App. 819 (1984), but it does have  
7 jurisdiction to consider the consistency of rules with the underlying statutes as applied. *D/O*  
8 *Center v. Department of Ecology*, 119 Wn.2d 761, 774 (1992).” *Kariah Enterprises, LLC v.*  
9 *Department of Ecology*, PCHB No. 05-021, at p. 15 (Corrected Order Granting Partial Summary  
10 Judgment) (January 6, 2005).

11 [15]

12 Respondents indicate that the statutory four-part test used by Ecology in deciding  
13 whether to grant a new water right, together with the mitigation approval authority provided in  
14 RCW 90.03.255 and RCW 90.44.055, provide sufficient standards to guide Ecology’s review of  
15 water mitigation plans. The four-part test, found in RCW 90.03.290, requires Ecology to  
16 determine whether: (1) the water will be applied to a beneficial use, (2) the water is available for  
17 appropriation, (3) the proposed use will not impair existing rights, and (4) the proposed use will  
18 not be detrimental to the public interest. RCW 90.44.060 makes these criteria applicable to  
19 applications for groundwater. Ecology also points to its own April 2003 report as evidence that  
20 the circumstances surrounding a particular water right often call for unique remedies.

1 [16]

2 The Board is not persuaded by the Appellant's arguments. Previous deliberations by  
3 Ecology of whether to adopt rules in this area are not persuasive here. Washington courts have  
4 been reluctant to rely upon negative legislative history to make a finding of why or why not a  
5 proposal was not adopted. *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46, 63-64 (1991); *Spokane*  
6 *County Health District v. Brockett*, 120 Wn.2d 140, 153 (1992). The Board agrees with the  
7 Respondents that the statutory four-part test for Ecology to issue a water right provides sufficient  
8 guidance and places adequate limits on Ecology's discretion when evaluating a water mitigation  
9 plan. All four criteria in RCW 90.03.290 are separate determinations that Ecology must make  
10 prior to issuance of a water right permit. *Hillis v. Ecology*, 131 Wn.2d 373, 384, 932 P.2d 139  
11 (1997). In upholding Ecology's authority to condition a water rights permit in *Theodoratus*, the  
12 Supreme Court acknowledged the statutes place limits on Ecology's discretion. The Court  
13 acknowledged the Department's authority to impose a condition, "provided, of course, that it  
14 also must comply with all relevant statutes." 135 Wn.2d at 597. If the mitigation plan fails to  
15 address a deficiency in any portion of the four-part test, the mitigation plan is inadequate and no  
16 water right permit may issue. Summary judgment on Issue No. 8 is granted in favor of the  
17 Respondents.

18 [17]

19 The Board next addresses the Squaxin Tribe's request to shift the burden of proof in this  
20 proceeding to Ecology. The Tribe contends that since there are no uniform standards regarding  
21 the adequacy of mitigation plans, it is "appropriate for the decision-making body to have the

1 burden to justify its decision.” *Squaxin Tribe’s Motion for Summary Judgment*, p. 17, citing  
2 *Sunderland Family Treatment Servs. v. City of Pasco*, 127 Wn.2d 782 at 797, 903 P.2d 986  
3 (1995).

4 [18]

5 The Board has already concluded that sufficient guidance exists for Ecology to review  
6 and determine the adequacy of mitigation plans. Board rules also place the burden of proof on  
7 the appealing party, unless the case involves a penalty or regulatory order. WAC 371-08-485(3).  
8 In addition, the Board’s rule is consistent with the State Administrative Procedures Act, which  
9 places the burden of demonstrating the invalidity of an agency action on the party who asserts  
10 the invalidity. RCW 34.05.570(1) (a). Nothing presented by the Appellant’s argument  
11 convinces the Board that it is appropriate to shift the burden of proof to Ecology in this  
12 proceeding. The request to shift the burden of proof to Ecology is denied.

13 [19]

14 Finally, the Board addresses the Squaxin Tribe’s request for clarification regarding the  
15 standard contained in WAC 173-513-050. The Tribe seeks affirmation by this Board that this  
16 standard means "a proposed withdrawal of ground water from a closed stream or lake in  
17 hydraulic continuity must be denied if it is established factually that the withdrawal will have  
18 any effect on the flow or level of the surface water." *Citing Postema v. Pollution Control*  
19 *Hearings Board*, 142 Wn.2d 68, 94, 11 P.3d 726 (2000), (emphasis added). The Tribe is not  
20 requesting the Board to rule on whether the water right applications meet this standard.

1 [20]

2 In addressing the availability of water standard for this watershed, the Board must  
3 determine how to reconcile the Supreme Court's interpretation in *Postema* of the availability  
4 prong in the four-part test contained in RCW 90.03.290 (any effect), and the language in WAC  
5 173-513-050 (clear adverse impact). Both Reports of Examination found that, with the  
6 mitigation plan, water is available and that it is not expected that the withdrawals would have a  
7 clear adverse impact on the surface water. Both Reports of Examination, however, state that  
8 "affects will be year-round." *Declaration of John Arum, Exs. 3 and 4*. If there are year-round  
9 effects, did Ecology err in concluding water was available?

10 [21]

11 Prior to *Postema*, reported decisions largely discussed the availability prong in terms of  
12 two types of inquiries: (1) whether certain waters were in fact "public waters" and available for  
13 appropriation, *Jensen v. Ecology*, 102 Wn.2d 109, 685 P.2d 1068 (1984); *Ecology v. U.S. Bureau*  
14 *of Reclamation*, 118 Wn.2d 761, 827 P.2d 275 (1992); and (2) whether the water was physically  
15 present in the stream. *Yakama Indian Nation v. Ecology*, PCHB Nos. 93-157, 93-166 through  
16 93-168, 93-173 through 93-177, 93-205 through 93-212, 93-215 through 93-221, 97-117 and 97-  
17 118, at p. 11 (Order on Motions for Summary Judgment) (October 9, 1998). Water availability  
18 has also been given additional meaning by other legislative enactments, such as RCW 90.44.130,  
19 which refers to Ecology maintaining a safe sustaining yield for prior appropriators so that the  
20 consumptive use of water does not exceed nature's ability to replace it. *Green, et al. v. Ecology*,  
21 PCHB Nos. 91-139, 91-141 and 91-149 (1992). RCW 90.44.070 also prohibits the granting of

1 groundwater permits “beyond the capacity of the underground bed or formation ... to yield such  
2 water within a reasonable or feasible pumping lift ....” *Citizens for Sensible Development v.*  
3 *Ecology*, PCHB No. 90-134 (1991).

4 [22]

5 In *Postema*, the Supreme Court was faced with numerous issues related to hydraulic  
6 continuity between surface water and groundwater, including whether a showing of hydraulic  
7 continuity, in and of itself, was sufficient to establish impairment. In the portion of that opinion  
8 pertaining to hydraulic continuity with a stream closed to further appropriations by rule, the  
9 Court stated that the proposed groundwater withdrawal must be denied “if it is established  
10 factually that the withdrawal will have any effect on the flow or level of the surface water.” 142  
11 Wn.2d at 95.

12 [23]

13 Respondents seek to distinguish *Postema* on the basis that the specific standard in the  
14 Puyallup River Basin rule (found at WAC 173-510-050) at issue in that case is different than the  
15 Deschutes River Basin rule at issue here. The Puyallup River Basin rule requires a determination  
16 of whether a proposed withdrawal will have “a direct, and measurable, impact on stream  
17 flows....” The Court interpreted measurability under this rule to mean “ascertainable using the  
18 best available science” including modeling, and rejected the argument that standard stream  
19 measuring devices must be used in making the determination. *Id.* at 91-92. The Court also  
20 rejected the parties’ arguments that the differently worded rules pertaining to various basins  
21 should all be interpreted in the same manner. *Id.* at 86-87.

1 [24]

2 As discussed earlier, WAC 173-513-050 provides that groundwater withdrawals aren't  
3 affected by the restrictions in this chapter "unless it is verified that such withdrawal would  
4 clearly have an adverse impact upon the surface water system *contrary to the intent and*  
5 *objectives of this chapter.*" (emphasis added). The purpose articulated in WAC 173-513-020 for  
6 the closure of waters within the Deschutes River basin from further consumptive appropriation is  
7 to provide sufficient instream flows "necessary to provide protection for wildlife, fish, scenic,  
8 aesthetic, environmental values, recreation, navigation, and water quality." The Deschutes River  
9 Basin chapter was adopted pursuant to the Water Resources Act, chapter 90.54 RCW, and  
10 chapter 90.22 RCW relating to minimum water flows and levels.

11 [25]

12 The purpose statement of the Water Resources Act of 1971 recognizes that water is  
13 becoming a more limited resource, and it is necessary to meet the needs of the state's growing  
14 population and economy while at the same time preserving and protecting instream resources  
15 and values so that future generations can enjoy them. RCW 90.54.010(1) (a).

16 [26]

17 RCW 90.54.020 declares several fundamentals for utilizing and managing the state's  
18 waters, including protection of the natural environment, which relates to the purpose articulated  
19 in WAC 173-513-020 for the closure of waters within the Deschutes River basin. This  
20 fundamental states:

21 (3) The quality of the natural environment shall be protected and, where  
possible, enhanced as follows:

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1 (a) Perennial rivers and streams of the state shall be retained with base  
2 flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic  
3 and other environmental values, and navigational values. Lakes and ponds  
4 shall be retained substantially in their natural condition. Withdrawals of water  
which would conflict therewith shall be authorized only in those situations  
where it is clear that overriding considerations of the public interest will be  
served.

5 [27]

6 RCW 90.22.010 authorizes Ecology to establish minimum flows for the protection of  
7 “fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public  
8 waters whenever it appears to be in the public interest to establish the same.”

9 [28]

10 WAC 173-513-050 does not authorize groundwater withdrawals that would clearly have  
11 an impact on surface water systems contrary to the intent and objectives of this chapter. WAC  
12 173-513-020 states that the purpose of the chapter is to “provide protection for wildlife, fish,  
13 scenic, aesthetic, environmental values, recreation, navigation, and water quality.” RCW  
14 90.54.020(3) and 90.22.010, which are the authorizing statutes for WAC Chapter 173-513,  
15 likewise recognize the need to protect wildlife, fish, scenic, aesthetic, and other similar  
16 environmental values. Prior to stating its holding regarding availability of water, the Supreme  
17 Court in *Postema* stated that “Ecology is required to protect surface waters in order to preserve  
18 the natural environment, in particular ‘base flows necessary to provide for preservation of  
19 wildlife, fish, scenic, aesthetic and other environmental values, and navigational values.’ RCW  
20 90.54.020(3) (a).” 142 Wn.2d at 94-95.

21 [29]

It is possible for the Board to reconcile WAC 173-513-050 and the holding in *Postema* by finding that groundwater withdrawals in the Deschutes Basin constitute a clear adverse impact and are subject to that WAC chapter's provisions, if the withdrawals produce any effects which adversely impact the values identified in WAC 173-513-020. If the Squaxin Tribe is able to demonstrate such an impact, then the water is not available within the meaning of RCW 90.03.290 and the groundwater permits at issue must be set aside. Consistent with the finding in *Postema*, the terms "verified" and "clearly" as used in this rule mean ascertainable through best available science.

[30]

Reconciling the statutory four-part test and the Ecology regulation is also consistent with the observation by the Supreme Court in *Postema* that “administrative rules and regulations cannot amend or change statutory requirements.” 142 Wn.2d at 97.



1 **ORDER**

2 IT IS ORDERED that:

- 3 1. Issues Nos. 2, 3, and 5 are WITHDRAWN at the request of all parties.  
4 2. The Motion for Summary Judgment on Issue No. 8 is GRANTED in favor of  
5 Respondents.  
6 3. The request to shift the burden of proof to Ecology in this proceeding is DENIED.  
7 4. All remaining issues will be decided at the hearing on the merits.

8 Done this 19<sup>th</sup> day of May 2006.

9 **POLLUTION CONTROL HEARINGS BOARD**

10 William H. Lynch, Presiding

11 Kathleen D. Mix, Member

12 Andrea McNamara Doyle, Member  
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